

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

File No. RH05045970

Date: September 29, 2006

NOTICE OF PROPOSED REGULATORY ACTION

WORKERS' COMPENSATION DEDUCTIBLES AND LOSS RESERVES

NOTICE IS HEREBY GIVEN that pursuant to California Government Code section 11346 *et seq.*, Insurance Commissioner John Garamendi (hereinafter "Commissioner") proposes to commence a rulemaking proceeding to adopt Article 9.8 of Subchapter 3 of Chapter 5 of Title 10 of the California Code of Regulations regarding the Workers' Compensation Deductibles and Loss Reserves with the Department of Insurance (hereinafter "Department"). The Commissioner conducts this rulemaking proceeding to gather information and public comment concerning this proposed regulation.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: Monday, November 20, 2006, at 9:00 a.m.–1:00 p.m.

**Location: California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

[Persons should check-in at the 17th Floor Reception for the hearing, and the hearing will be conducted in 16th floor conference room.]

The hearing will continue on the date noted above until all testimony has been submitted or 1:00 p.m., whichever is earlier.

REASONABLE ACCOMMODATION

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on the proposed regulations, may request assistance by contacting Christopher Citko, Senior Staff Counsel, 300 Capitol Mall, 17th Floor, Sacramento, CA, 95814; telephone, 916-492-3187; fax, 916-324-1883. It is recommended that assistance be requested at least two weeks prior to the hearing.

PRESENTATION OF WRITTEN COMMENTS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on November 20, 2006. Please direct all written comments to the following contact person:

Christopher A. Citko, Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3187

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel
California Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Telephone: (415) 538-4390

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on November 20, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: **citkoc@insurance.ca.gov**. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Christopher A. Citko and sent to the following facsimile number: **(916) 324-1883**.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail/facsimile are subject to the deadline above for written comments and must be received no later than 5:00 p.m. on November 20, 2006.

AUTHORITY AND REFERENCE TO CODE SECTIONS

The Commissioner proposes to adopt Article 9.8 pursuant to the authority of California Insurance Code (CIC) section 11736.5. The purpose of this regulation is to implement, interpret, and make specific the provisions of CIC section 11736.5.

INFORMATIVE DIGEST

Existing law provides for the regulation of workers' compensation insurers by the Department of Insurance regarding insurers' deposits for payment of workers' compensation losses and loss reserves. Existing law also requires workers' compensation insurers that issue workers' compensation policies that include a deductible be responsible for payment of all losses under that policy and to treat the deductible as an advance of funds by the insurer to the employer and creates

a legal obligation of reimbursement. Insurance Code section 11736.5 enacted in AB 3075 (Chapter 1131, Statutes of 1994) requires the Commissioner to establish regulations regarding those forms of collateral or security that an insurer may designate to secure the deductible amount of any policy of workers' compensation and to establish the basis for reserves and recognition of receivables for insurers writing worker's compensation deductible policies. These regulations are promulgated to achieve those requirements established by the legislature concerning workers' compensation deductibles and policies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

LOCAL AGENCY AND SCHOOL DISTRICT MANDATES AND REIMBURSEMENTS

The Commissioner has determined that the proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

FISCAL IMPACT ESTIMATES TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Commissioner has determined that the proposed regulations will not impose costs on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Commissioner has determined that the proposed regulations will not impose any non-discretionary costs or savings to any local agencies or any costs or savings in federal funding to the State.

COSTS OR SAVINGS TO STATE AGENCIES

The Commissioner has determined that the proposed regulations will not impose any costs or savings to state agencies.

EFFECT ON HOUSING COSTS

The Commissioner has determined that the proposed regulations will have no significant effect on housing costs.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES/SMALL BUSINESSES

The Commissioner has made an initial determination that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has determined there are no alternatives to these proposed regulations to lessen this impact based upon the mandate of the legislature to allow for such collateral in lieu of deposits so as to insure the payment of compensation to injured workers as required by the California Insurance Code.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The

Commissioner estimates that the proposed regulations will not have any impact or significant effect in these areas.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations will not affect small business as these regulations set forth requirements for insurance companies that insure for workers' compensation to take credit against deposits for specified collateral obtained for deductible policies and to establish loss reserves for losses incurred under deductible policies. Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), workers' compensation insurers are not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the initial statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action is contained in the rulemaking file, which is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

15-DAY CHANGES

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

FINAL STATEMENT OF REASONS

Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

- To search, enter "RH05045970" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (in this case, "11736.5") or search by keyword ("workers' compensation", "workers' compensation deductibles", for example). Then, click on the "Submit" button to display links to the various filing documents.
- To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Workers' Compensation Deductible Collateral and Loss Reserves" link, and click it. Links to the documents associated with these regulations will then be displayed.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

Dated: September 29, 2006

JOHN GARAMENDI, Insurance Commissioner

By /s/
Christopher A. Citko, Senior Staff Counsel